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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,338	01/03/2006	Louis Lagler	P/4631-14	8840
2352	7590	10/02/2008	EXAMINER	
OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403				TUCKER, DANIEL P
ART UNIT		PAPER NUMBER		
4159				
MAIL DATE		DELIVERY MODE		
10/02/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/563,338	LAGLER, LOUIS	
	<b>Examiner</b>	<b>Art Unit</b>	
	Daniel Tucker	4159	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-10 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 01/03/2006 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. ____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date <u>01/03/2006</u> .	6) <input type="checkbox"/> Other: ____ .

## DETAILED ACTION

### ***Information Disclosure Statement***

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Drawings***

2. The drawings are objected to because the specification refers to character "4" in Figure 1, although "4" appears in other figures, it does not appear in Figure 1. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet"

pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 1-6, 7, 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,148,912 (Nozawa hereinafter) in view of US Patent No. 6,041,477 (Rentsch et al. hereinafter).

**FIG.1**

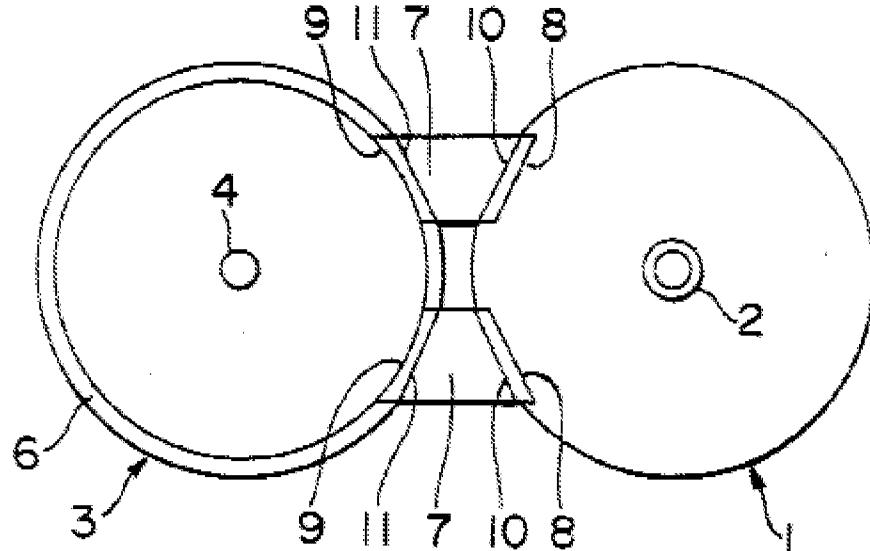


Fig. 1 of US Patent No. 5,148,912 (Nozawa hereinafter)

FIG. 4

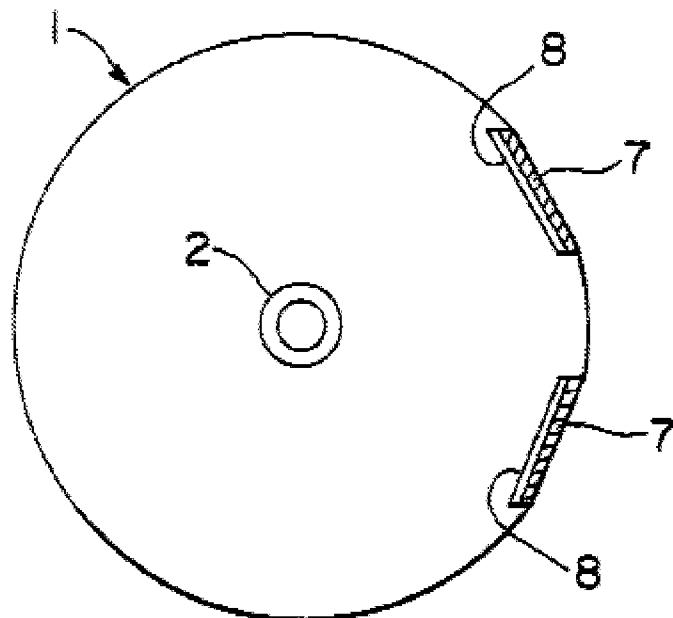


Fig. 4 of Nozawa

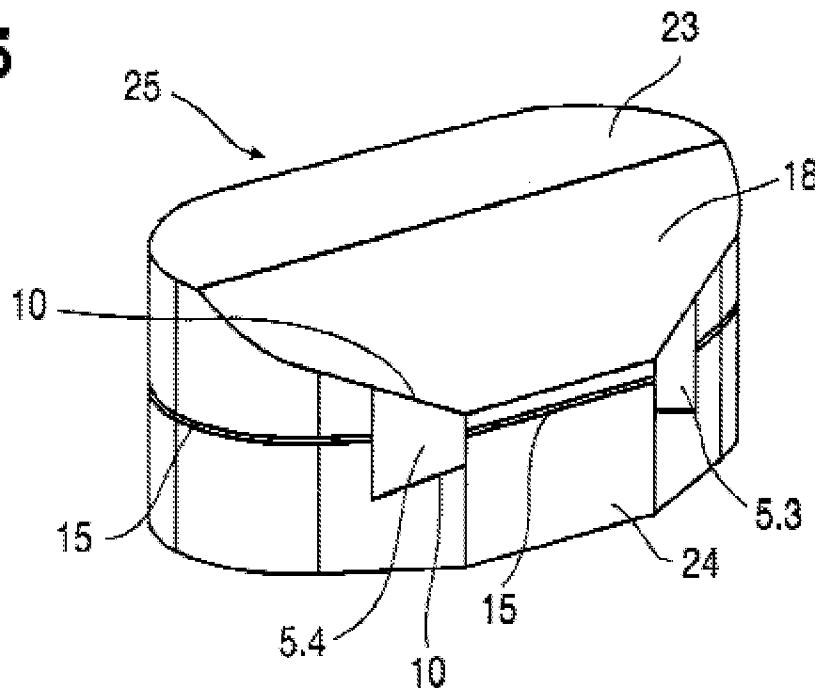
5. In re Claim 1, with reference to Fig. 1 and Fig. 4 above, Nozawa discloses:

A closure moulded in closed position with

- a body (1) comprising fixing (col. 7, lines 5-7) means to fix the closure on a neck of a bottle, and
- a lid (3), comprising a sealing mean (4) to seal an orifice (2) of the bottle,
- a snap hinge comprising a first and a second trapezoid element (7) and a first and second pair of film hinges (10, 11) each pair defining a first and a second plane (Fig. 4), the first and the second pair of film hinges (10, 11) connecting the first and the second trapezoid element (7) to the lid (3) and to the body (1), whereby the first and the second plane are arranged substantially parallel to an axis A (Fig. 4) of the closure.

Nozawa does not disclose that the body and the lid are separated by a circumferential gap.

**FIG. 5**



**Fig. 5 of US Patent No. 6,041,477 (Rentsch et al. hereinafter)**

6. However, with reference to Fig. 5 above, Rentsch et al. discloses a closure whereby the body (24) and the lid (23) are separated from each other by a circumferential gap (15).

7. Thus it would have been obvious to one having ordinary skill in the pertinent art at the time the invention was made to have modified the closure of Nozawa to have a circumferential gap as taught by Rentsch et al. in order to achieve the predictable result of separating the body from the lid.

8. In re Claim 2, Rentsch et al. discloses the first and second pair of film hinges are arranged at an angle  $\Phi$  to each other, and the first and the second plane defined by the

first and the second pair of film hinges are arranged at an angle  $\omega$ , the angle to and an opening angle  $\alpha$  of the closure is:

$$\Phi/2 = a \tan\left[\frac{\sin(\alpha)}{1 - \cos(\alpha)} \sin\left(\frac{\omega}{2}\right)\right] \text{ (col. 13, lines 1-10).}$$

9. In re Claim 3, Rentsch et al. discloses that the opening angle  $\alpha$  is in the range of 180° and 240° (col. 3, lines 39-42; col. 4, lines 51-53).

10. In re Claim 4, Rentsch et al. discloses that the film hinges and the inner periphery of the closure are designed such that they do not protrude over a main inner radius of the closure (col. 4, lines 16-19).

11. In re Claim 5, with reference to Fig. 1 and Fig. 4 above, Nozawa discloses that that the film hinges (10, 11) are defined by a plane on the inside of the closure and the outside of the film hinges (10, 11) is defined by two flat boundary planes, arranged at an angle each other, and a cylindrical boundary surface having a radius.

It is implicit that the boundary planes of the film hinges be at angle to each and have a cylindrical boundary surface otherwise the closure would not open.

12. In re Claim 6, with reference to Fig. 1 and Fig. 4 above, Nozawa discloses that the trapezoid elements (7) are spaced apart by a cutout.

**FIG. 7**

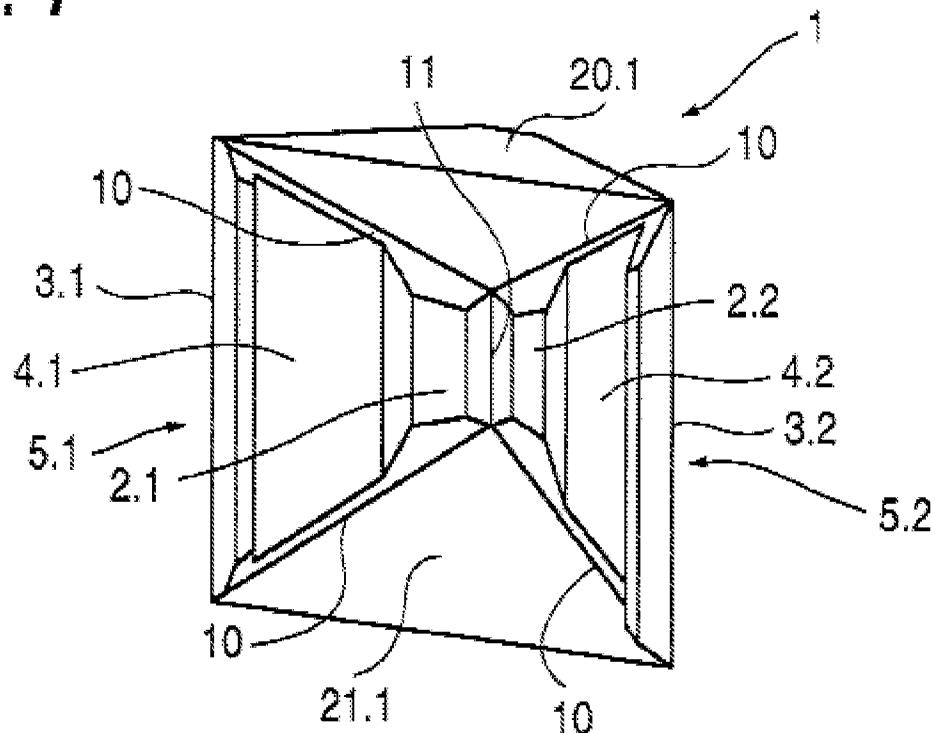
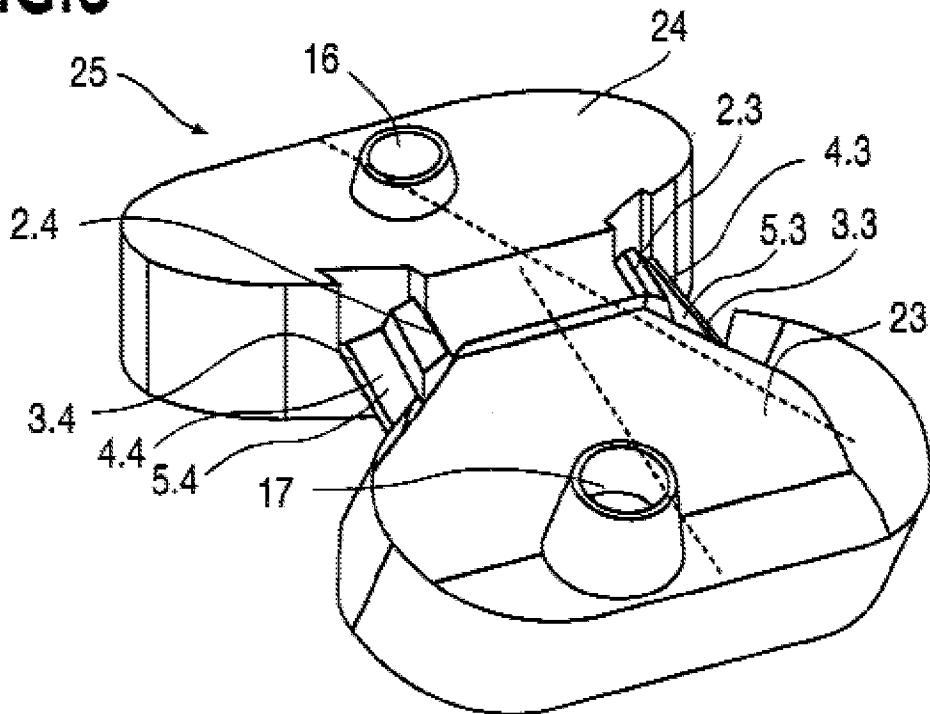


Fig. 7 of Rentsch et al.

13. In re Claim 7, with reference to Fig. 7 above, Rentsch et al. discloses that the trapezoid elements (5.1, 5.2) are connected by a thin film hinge along a shorter edge (11).

**FIG.6**



14. In re Claim 9, with reference to Fig. 6 above, Rentsch et al. discloses that the body (24) and lid (23) are in the open position spaced a distance  $s$  apart, whereby distance  $s$  is equal to 50% to 90% of the shorter edge of the trapezoid element (5.4, 5.3). In order for  $s$  to be 50% to 90% of the shorter edge of the trapezoid  $\alpha$  must be between  $120^\circ$  and  $154^\circ$  or between  $206^\circ$  and  $240^\circ$ . Rentsch et al. discloses that the closure is capable of angles greater than  $180^\circ$ . Thus, the closure disclosed by Rentsch et al. can be in either range of angles when in the open position.

15. In re Claim 10, with reference to Fig. 1 and Fig. 4 above, Nozawa discloses that the closure is characterized by a cylindrical outer wall section.

16. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nozawa in view of Rentsch et al. as applied to claim 1 above, and further in view of US Patent Application Publication No. 2002/0079282A1 (Harrold et al. hereinafter).

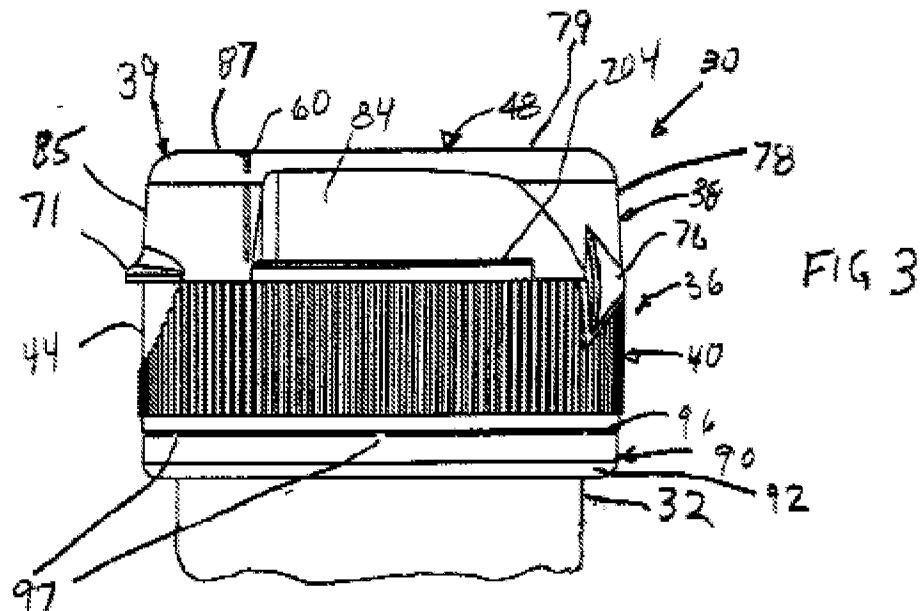


Fig. 3 of US Patent Application Publication No. 2002/0079282A1 (Harrold et al. hereinafter)

17. In re Claim 8, with reference to Fig. 1, Fig. 4, and Fig. 5 above, Nozawa in view of Rentsch et al. discloses the claimed invention except for tamper evidence means.

18. However, with reference to Fig. 3 above, Harrold et al. discloses tamper evidence means (90).

19. Thus, it would have been obvious to one having ordinary skill in the pertinent art at the time the invention was made to have modified the closure disclosed by Nozawa in view of Rentsch et al. to have tamper evidence means as taught by Harrold et al. in order to achieve the predictable result of indicating if the closure had been tampered with.

***Conclusion***

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent No. 5,067,624 discloses a snap hinge closure. US Patent No. 4,915,268 discloses a snap hinge closure. US Patent Application Publication No. 2003/0205549A1 discloses a snap hinge closure with tamper evidence means. US Patent No. 6,152,320 discloses a snap hinge closure with tamper evidence means. US Patent No. 6,821,239B2 discloses a snap hinge closure with tamper evidence means.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Tucker whose telephone number is (571)270-5722. The examiner can normally be reached on Monday - Friday, 7:30 a.m. - 5:00 p.m., EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Nguyen can be reached on (571)272-4491. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Quang T Van/  
Primary Examiner, Art Unit 3742

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Examiner, Art Unit 4159